

Amendment No. 2 To Contract No. PA180000087 For Foreign Language Books Between Alm Holdings Corporation dba Chulainn Publishing Corp. and the City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 14, 2020 through November 13, 2021. No options will remain.
- The total contract amount is increased by \$10,773.00 by this extension period. The total contract authorization is 2.0 recapped below:

Action	Action Amount	Total Contract Amount		
Initial Term:				
11/14/2018 - 11/13/2019	\$10,773.00	\$10,773.00		
Amendment No. 1: Option 1 – Extension				
11/14/2019 - 11/13/2020	\$10,773.00	\$21,546.00		
Amendment No. 2: Option 2 - Extension				
11/14/2020 - 11/13/2021	\$10,773.00	\$32,319.00		

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced

contract.

Sign/Date:

Printed Name: ALFREDO

Authorized Representative

Alm Holdings Corporation dba Chulainn Publishing Corp. 7436 Indian Wells Way Lone Tree, Colorado 81024-4211

(303) 790-4112

libros@chulainnlibros.com

Matthew

Sign/Date: Duree Digitally signed by Matthew Duree Date: 2020.10.29 10:32:29 -05'00'

Mike Zambrano, Jr. Contract Management Specialist III

City of Austin **Purchasing Office** 124 W. 8th Street, Ste. 310 Austin, Texas 78701



Amendment No. 2
To
Contract No. PA180000087
For
Foreign Language Books
Between
India Children's Press
dba India for Everyone
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 14, 2020 through November 13, 2021. No options will remain.
- 2.0 The total contract amount is increased by \$9,975.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount		
Initial Term: 11/14/2018 – 11/13/2019	\$9,975.00	\$9,975.00		
Amendment No. 1: Option 1 – Extension 11/14/2019 – 11/13/2020	\$9,975.00	\$19,950.00		
Amendment No. 2: Option 2 – Extension 11/14/2020 – 11/13/2021	\$9,975.00	\$29,925.00		

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Deleted Names

Printed Name:____

Authorized Representative

India Children's Press dba India for Everyone 18760 Tilson Avenue Cupertino, California 95014 (877) 417-5185

mkhosla@indiaforeveryone.org

Matthew

Duree

Digitally signed by Matthew Duree Date: 2020.10.29

Mike Zambrano, Jr.

Sign/Date:

Contract Management Specialist III

City of Austin Purchasing Office 124 W. 8th Street, Ste. 310 Austin, Texas 78701



Amendment No. 2
To
Contract No. PA180000087
For
Foreign Language Books
Between
Latin American Book Source, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 14, 2020 through November 13, 2021. No options will remain.
- 2.0 The total contract amount is increased by \$9,975.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term:		
11/14/2018 - 11/13/2019	\$9,975.00	\$9,975.00
Amendment No. 1: Option 1 – Extension		
11/14/2019 - 11/13/2020	\$9,975.00	\$19,950.00
Amendment No. 2: Option 2 – Extension 11/14/2020 – 11/13/2021	\$9,975.00	\$29,925.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Motthow

COMMACI.

Sign/Date:

Printed Name:

Authorized Representative

Latin American Book Source, Inc. 681 Anita Street, Suite 102 Chula Vista, California (619) 426-1226

sales@latambooks.com

Matthew

Duree

Digitally signed by Matthew Duree Date: 2020.10.29 10:31:00 -05'00'

Mike Zambrano, Jr.
Contract Management Specialist III

City of Austin Purchasing Office 124 W. 8th Street, Ste. 310 Austin, Texas 78701

Sign/Date:



Amendment No. 2
To
Contract No. PA180000087
For
Foreign Language Books
Between
Lectorum Publications, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 14, 2020 through November 13, 2021. No options will remain.
- 2.0 The total contract amount is increased by \$6,840.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount		
Initial Term:				
11/14/2018 – 11/13/2019	\$6,840.00	\$6,840.00		
Amendment No. 1: Option 1 – Extension				
11/14/2019 - 11/13/2020	\$6,840.00	\$13,680.00		
Amendment No. 2: Option 2 - Extension				
11/14/2020 - 11/13/2021	\$6,840.00	\$20,520.00		

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced

contract.

Sign/Date:

8/24/2020 Sign/Date:

Matthew Duree

Digitally signed by Matthew Duree Date: 2020.10.29 10:30:24 -05'00'

Printed Name:
Authorized Representative

Lectorum Publications, Inc.

205 Chubb Avenue Lyndhurst, New Jersey 07071 (800) 345-5946 x2238

lbejarano@lectorum.com

Mike Zambrano, Jr.

Contract Management Specialist III

City of Austin Purchasing Office 124 W. 8th Street, Ste. 310 Austin, Texas 78701



Amendment No. 2
To
Contract No. PA180000087
For
Foreign Language Books
Between
TSAI Fong Books, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 14, 2020 through November 13, 2021. No options will remain.
- 2.0 The total contract amount is increased by \$19,950.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount		
Initial Term:				
11/14/2018 - 11/13/2019	\$19,950.00	\$19,950.00		
Amendment No. 1: Option 1 – Extension 11/14/2019 – 11/13/2020	\$19,950.00	\$39,900.00		
Amendment No. 2: Option 2 – Extension 11/14/2020 – 11/13/2021	\$19,950.00	\$59,850.00		

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY	THE	SIGNATURES	affixed	below.	this	amendment	is	hereby	incorporated	into	and	made	a parl	t of	the	above-	-reference	sed

contract.

Sign/Date:

Sign/Date:

Matthew Duree

Digitally signed by Matthew Duree Date: 2020.10.29 10:29:44 -05'00'

Printed Name:_

Authorized Representative

TSAI Fong Books, Inc. 3722 Briarpark Drive, Suite 200

Houston, Texas 77942 (713) 974-6226 x102

virginia@bookswindow.com

Mike Zambrano, Jr.

Contract Management Specialist III

City of Austin Purchasing Office 124 W. 8th Street, Ste. 310

Austin, Texas 78701



Amendment No. 1
to
Contract No. PA180000087
for
Foreign Language Books
between
Alm Holdings Corporation dba Chulainn Publishing Corp.
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. The extension option will be effective November 14, 2019 to November 13, 2020. One additional option remains.
- 2.0 The total contract amount is increased by \$10,773.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amour		
Initial Term: 11/14/18 - 11/13/19	\$10,773.00	\$10,773.00		
Amendment No. 1: Option 1	\$10,773.00	\$10,773.00		
11/14/19 - 11/13/20	\$10,773.00	\$21,546.00		

- 3.0 MBEIWBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature &

Date:

(8/19/2019)

Printed Name: ALFREDO MARROQU

Authorized Representative PRESIDE

Chulainn Publishing Corp. 7436 Indian Wells Way, Lone Tree, Colorado 80124-4211 303-790-4112

libros@chulainnlibros.com

Sarah Ramos

Procurement Specialist II

City of Austin Central Purchasing Office 124 West 8th Street, Ste. 310 Austin, TX 78701

cmos 10/9/19



Amendment No. 1 to Contract No. PA180000087 for Foreign Language Books between

India Children's Press dba India For Everyone

- 1.0 The City hereby exercises this extension option for the subject contract. The extension option will be effective November 14, 2019 to November 13, 2020. One additional option remains.
- 2.0 The total contract amount is increased by \$9,975.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount		
Initial Term: 11/14/18 - 11/13/19	\$9,975.00	\$9,975.00		
Amendment No. 1: Option 1 11/14/19 - 11/13/20	\$9,975.00	\$19,950.00		

- 3.0 MBEIWBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

ON! Sep 18, 2019

Sarah Ramos Procurement Specialist II

Printed Name: MOHICA KHOS LA
Authorized Representative

City of Austin Central Purchasing Office 124 West 8th Street, Ste. 310 Austin, TX 78701

India for Everyone ATTN: Monica Khosla 18760 Tilson Avenue Cupertino, CA. 95014 877-417-5185

mkhosla@indiaforeveryone.org.



Amendment No. 1 to Contract No. PA180000087 for Foreign Language Books between Latin American Book Source Inc

- 1.0 The City hereby exercises this extension option for the subject contract. The extension option will be effective November 14, 2019 to November 13, 2020. One additional option remains.
- 2.0 The total contract amount is increased by \$9,975.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amoun		
Initial Term:				
11/14/18 - 11/13/19	\$9,975.00	\$9,975.00		
Amendment No. 1: Option 1				
11/14/19 - 11/13/20	\$9,975.00	\$19,950.00		

- 3.0 MBEIWBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sept. 17, 2019

Printed Name: Ldards
Authorized Representative

Latin American Book Source ATTN: Edgardo Moctezuma 681 Anita Street, Suite 102 Chula Vista, CA 91911 619-426-1226 sales@latambooks.com Saran

Sarah Ramos Procurement Specialist II mos 10.9.19

City of Austin Central Purchasing Office 124 West 8th Street, Ste. 310 Austin, TX 78701



Amendment No. 1 to Contract No. PA180000087 for Foreign Language Books between Lectorum Publications, Inc.

- 1.0 The City hereby exercises this extension option for the subject contract. The extension option will be effective November 14, 2019 to November 13, 2020. One additional option remains.
- 2.0 The total contract amount is increased by \$6,840.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amour		
Initial Term:				
11/14/18 - 11/13/19	\$6,840.00	\$6,840.00		
Amendment No. 1: Option 1				
11/14/19 - 11/13/20	\$6,840.00	\$13,680.00		

- 3.0 MBEIWBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature &

Date:

Printed Name!

Authorized Representative

Lectorum ATTN: Laura Bejarano 205 Chubb Avenue, Lyndhurst, NJ 0707 1800-345-5946 x2238 Ibejarano@lectorum.com Signature & Da

Sarah Ramos

Procurement Specialist II

City of Austin Central Purchasing Office 124 West 8th Street, Ste. 310 Austin, TX 78701



Amendment No. 1 Contract No. PA180000087 for Foreign Language Books between TSAI Fong Books Inc.

- The City hereby exercises this extension option for the subject contract. The extension option will be effective November 14, 2019 to November 13, 2020. One additional option remains.
- The total contract amount is increased by \$19,950.00 for the extension option period. The total Contract 2.0 authorization is recapped below:

Term	Action Amount	Total Contract Amoun		
Initial Term: 11/14/18 - 11/13/19	\$19,950.00	\$19,950.00		
Amendment No. 1: Option 1 11/14/19 - 11/13/20	\$19,950.00	\$39,900.00		

- 3.0 MBEIWBE goals do not apply to this contract.
- By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the abovereferenced contract.

Signature &

Date:

Printed Name: VI

Authorized Representative

Tsai Fong Books, Inc. ATTN: Tsai Fong, Contract Manager 3711 Briarpark Dr. Ste.200

Houston, TX 77042 713-974-6226 x102

virginia@bookswindow.com

Sarah Ramos Procurement Specialist II

City of Austin Central Purchasing Office 124 West 8th Street, Ste. 310 Austin, TX 78701

CONTRACT BETWEEN THE CITY OF AUSTIN

AND
Chulainn Publishing Corp.
For
Foreign Language Books
Contract No. PA180000087

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Chulainn Publishing Corp. ("Contractor"), having offices at 7436 Indian Wells Way, Lone Tree, Colorado 80124-4211.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 <u>Responsibilities of the City</u>. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Chulainn Publishing Corp., Phone: (303) 790-4112, Email Address: e.farro@chulainnlibros.com. The City's Contract Manager for the engagement shall be Jorge A. Valle, Phone: (512) 974-7432, Email Address: jorge.valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:
 - 2.2.1 Each shipping container shall be clearly and permanently marked with the Contractor's name and address, the City's name, 635 N. Pleasant Valley Rd. Austin, TX 78702 and purchase order
 - 2.2.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - 2.2.3 Delivery is to be made within 65 calendar days after the order is placed (either verbally or in writing).
 - 2.2.4 The contractor must deliver an average of 80 percent of the publications.

SECTION 3. COMPENSATION

- 3.1 <u>Contract Amount</u>. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractors shall be paid an amount not-to-exceed \$172,539.00 for all fees and expenses, to be shared between all Contractors.
- 3.2 Economic Price Adjustment.

- 3.2.1 <u>Price Adjustments.</u> Prices shown in this Contract shall remain firm for the first (12 months) period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.2.2 <u>Effective Date</u>. Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.2.3 Adjustments. A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- 3.2.4 <u>Indexes</u>. In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - 3.2.4.1 The following definitions apply:
 - 3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).
 - 3.2.4.1.2 Base Price. Initial price quoted, proposed and/or contracted per unit of measure.
 - 3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - 3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - 3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.
 - 3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - 3.2.4.2.1 Utilize final Compilation data instead of Preliminary data
 - 3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.
 - 3.2.4.3 Index Identification. Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Index (PF	PI)
Series ID: PCU451211451211101	
	Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: PPI Industry data	for Book stores-Retailing of books
This Index shall apply to the following item	s of the Bid Sheet / Cost Proposal: All

- 3.2.5 Calculation. Price adjustment will be calculated as follows:
 - 3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation	
Divided by index on solicitation close date	

Equals Change Factor	
Multiplied by the Base Rate	
Equals the Adjusted Price	

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Public Library, Administration	
Attn:	Jorge A. Valle	
Email Address	Jorge.Valle@austintexas.gov	

- 3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.5 <u>Non-Appropriation</u>. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
 - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 months periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

- 4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- 4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 4.1.3 This is a 12 months Contract. Prices are firm for the first twelve (12) months.
- 4.2 <u>Right To Assurance</u>. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default.</u> The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

- Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation. cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 <u>Fraud.</u> Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 <u>Insurance</u>: This contract does not require insurance.

5.2 **Equal Opportunity.**

- 5.2.1 <u>Equal Employment Opportunity</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
- 5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- 6.3 <u>Warranty Deliverables.</u> The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - 6.3.1 Recycled Deliverables shall be clearly identified as such.
 - 6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - 6.3.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of

the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- 6.3.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
 - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
 - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 <u>Compliance with Health, Safety, and Environmental Regulations</u>. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

- 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

- 7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
 - 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 <u>Claims.</u> If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

To the Contractor:

City of Austin. Purchasing Office

Chulainn Publishing Corp.

ATTN: Sarah Ramos, Contract Administrator

ATTN: Edith Farro

PO BOX 1088

7436 Indian Wells Way

Austin, Texas 78767

Lone Tree, Colorado 80124-4211

- 7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.11 <u>Advertising</u>. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.13 <u>Gratuities</u>. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 <u>Prohibition Against Personal Interest in Contracts</u>. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 <u>Assignment-Delegation</u>. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 <u>Waiver.</u> No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

- 7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in

the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

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Date Observed
January 1
Third Monday in January
Third Monday in February
Last Monday in May
July 4
First Monday in September
November 11
Fourth Thursday in November
Friday after Thanksgiving
December 24
December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

- 7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
 - 7.29.1 any exceptions to the Offer accepted in writing by the City;
 - 7.29.2 the Supplemental Purchase Terms and Conditions;
 - 7.29.3 the Standard Purchase Terms and Conditions:
 - 7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

CHULAINN PUBLISHING CORP.	CITY OF AUSTIN ,
• / /	By: Signature Hoodin-Brown
Name: ALFREDO S MARROQUIN Printed Name	Name: Line II Goodin-Brown Printed Name
Title: PRESIDENT	Title: Contract Management Sup.
Date: 10/22/18	Date: 11 - 14-19

List of Exhibits

Exhibit A	Chulainn Publishing Corp. Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Chulainn Publishing Corp. Statement of Qualifications and/or Applicable Licenses

Exhibit A



DATE:

August 1, 2018

INVOICE NO.:

AUS-180801

CHIPPED TO
SHIPPED TO:
SAME
ORDERED BY:
COLLECTION DEVELOPMENT OFFICE
SPECIAL INSTRUCTIONS:
MAIL PAYMENTS TO:
CHULAINN PUBLISHING CORP.
7436 INDIAN WELLS WAY
LONE TREE, CO 80124-4211
FED ID#:

LIB. ORDER	TITLE	QTY PRICE	EXT. PRICE
	SPANISH LANGUAGE BOOKS	1 \$ 9,975.00	\$ 9,975.00
		CLIP TOTAL	A 0.075.00
		SUB TOTAL SHIPPING & HANDLING	\$ 9,975.00 \$ 798.00
		TOTAL DUE	\$ 10,773.00

EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this		
	CONTRACTOR Authorized Signature	Alpedo aloxozumil
	Title	PRESIDENT

Exhibit C

Austin Public Library Request for Information

Spanish Language Books

ALM Holdings Corporation
(Dba) Chulainn Publishing Corp.
Response
Auguts 01st, 2018

Table of Contents

- 1 Company Information
- 2 Resumes
 - 2.1 Alfredo Marroquin
 - 2.2 Edith Farro
- 3 Colorado & Lone Tree Sales Certificate
- 4 Official Quote

CONTRACT BETWEEN THE CITY OF AUSTIN

AND Fong Books, Inc

Tsai Fong Books, Inc. For

Foreign Language Books Contract No. PA180000087

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Tsai Fong Books, Inc. ("Contractor"), having offices at 3711 Briarpark Dr. Ste.200, Houston, TX 77042.

SECTION 1. GRANT OF AUTHORITY. SERVICES AND DUTIES

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2. Scope of Work.
- 1.2 <u>Responsibilities of the Contractor</u>. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 <u>Responsibilities of the City</u>. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 <u>Designation of Key Personnel</u>. The Contractor's Contract Manager for this engagement shall be Tsai Fong, Phone: 713-974-6226 x102, Email Address: virginia@bookswindow.com. The City's Contract Manager for the engagement shall be Jorge A. Valle, Phone: (512) 974-7432, Email Address: jorge.valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:
 - 2.2.1 Each shipping container shall be clearly and permanently marked with the Contractor's name and address, the City's name, 635 N. Pleasant Valley Rd. Austin, TX 78702 and purchase order
 - 2.2.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - 2.2.3 Delivery is to be made within 65 calendar days after the order is placed (either verbally or in writing).
 - 2.2.4 The contractor must deliver an average of 80 percent of the publications.

SECTION 3. COMPENSATION

3.1 <u>Contract Amount</u>. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractors shall be paid an amount not-to-exceed \$172,539.00 for all fees and expenses, to be shared between all Contractors.

3.2 Economic Price Adjustment.

- 3.2.1 Price Adjustments. Prices shown in this Contract shall remain firm for the first (12 months) period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.2.2 <u>Effective Date</u>. Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.2.3 Adjustments. A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- 3.2.4 <u>Indexes</u>. In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - 3.2.4.1 The following definitions apply:
 - 3.2.4.1.1 Base Period. Month and year of the original contracted price (the solicitation close date).
 - 3.2.4.1.2 Base Price. Initial price quoted, proposed and/or contracted per unit of measure.
 - 3.2.4.1.3 Adjusted Price. Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - 3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - 3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.
 - 3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - 3.2.4.2.1 Utilize final Compilation data instead of Preliminary data
 - 3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.
 - 3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Ind	ex (PPI)
Series ID: PCU451211451211101	
Not Seasonally Adjusted ■	Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: PPI Industry	y data for Book stores-Retailing of books
This Index shall apply to the following	g items of the Bid Sheet / Cost Proposal: All

- 3.2.5 Calculation. Price adjustment will be calculated as follows:
 - 3.2.5.1 Single Index. Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation	
Divided by index on solicitation close date	
Equals Change Factor	
Multiplied by the Base Rate	
Equals the Adjusted Price	

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Public Library, Administration	
Attn:	Jorge A. Valle	
Email Address	Jorge.Valle@austintexas.gov	

- 3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

- 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.5 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
 - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 months periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

- 4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- 4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 4.1.3 This is a 12 months Contract. Prices are firm for the first twelve (12) months.
- 4.2 <u>Right To Assurance</u>. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default</u>. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the

bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

- 4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages. costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 <u>Fraud</u>. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: This contract does not require insurance.

5.2 **Equal Opportunity**.

- 5.2.1 Equal Employment Opportunity. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
- 5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- 6.3 <u>Warranty Deliverables.</u> The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - 6.3.1 Recycled Deliverables shall be clearly identified as such.
 - 6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - 6.3.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All

costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- 6.3.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
 - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
 - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the iob.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might

reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

- 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 <u>Stop Work Notice</u>. The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
- 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 <u>Claims</u>. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City: To the Contractor:

City of Austin, Purchasing Office Tsai Fong Books, Inc.

ATTN: Sarah Ramos, Contract Administrator ATTN: Tsai Fong, Contract Manager

PO BOX 1088 3711 Briarpark Dr. Ste.200

Austin, Texas 78767 Houston, TX 77042

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- 7.11 <u>Advertising</u>. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.13 <u>Gratuities</u>. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 <u>Prohibition Against Personal Interest in Contracts</u>. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 <u>Assignment-Delegation</u>. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 <u>Waiver</u>. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days

after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as a policable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

- 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 <u>Invalidity</u>. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 Holidays. The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

- 7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
 - 7.29.1 any exceptions to the Offer accepted in writing by the City;
 - 7.29.2 the Supplemental Purchase Terms and Conditions;
 - 7.29.3 the Standard Purchase Terms and Conditions;
 - 7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

TSAI FONG BOOKS, INC	CITY OF AUSTIN
By: lugtony - Signature -	By: Signature Shall Hoodin-Brown
Name: VIRGINIA FONG Printed Name	Name: Line II Goodin - Brown Printed Name
Title: Business Manager	Title: Contract Monagent Sup
Date: 0 Ctober 18, 2018	Date: 11-14-18

List of Exhibits

Exhibit A Tsai Fong Books, Inc. Pricing Agreement

Exhibit B Non Discrimination Certification, Section 0800

Exhibit C Tsai Fong Books, Inc. Statement of Qualifications and/or Applicable Licenses

Exhibit A

Tsai Fong Books, Inc. The Best Source for Asian Language Materials

www.Bookswindow.com



To: Austin Public Library 635 N. Pleasant Valley Rd. Austin, Tx 78702

Quotation

Date		Quote#
	July 31, 2018	APL07312018
	Qty	Price

Description	Qty	Price
Asian Language Books	1 Lot	\$ 19,950.00
Terms: Net 30 days Re: Titles Selection to be selected by the Library or Special list can be provided upon request	Total	\$ 19,950.00

Thank you for the opportunity to quote!

Virginia Fong

Business Manager

Tel. 713-974-6226 x102

Email: Virginia@bookswindow.com

Tsai Fong Books, Inc. 3711 Briarpark Drive, Suite 200, Houston, Texas 77042

Phone: 713-974-6226 Fax: 713-974-1164 www.bookswindow.com info@bookswindow.com

EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 18 day of OCTOBER, 2018

CONTRACTOR TSAI FONG Broks, Inc.
Authorized Signature

Title BUSINGS Manager

Exhibit C

Tsai Fong Books, Inc.

The Best Source for Asian Language Materials

www.Bookswindow.com



COMPANY PROFILE

Tsai Fong Books, Inc. established in 1998, is one of the largest and leading Asian Language books distributors based in the United States. We are your one-stop for the most widely-read Asian Language books in both translated and authentic bestsellers, award winners, classics, DVDs, and Audio Books for adults and teen, juvenile audience, in Chinese (in both traditional and simplified Chinese), Japanese, Korean, and Vietnamese, also known as CJKV. We stock and distribute high quality books and audiovisual materials in a wide variety of categories to public libraries, schools, distributors, booksellers throughout the United States and Canada.

OUR MISSION: Build Your Asian Language Library effortlessly through Tsai Fong Books

OUR EXPERTISE: Collection Development

Our products, including books and DVDs and Audio Books in current formats, are sold online at our website: www.bookswindow.com. The online catalog contains more than 60,000 titles in CJKV. Keeping pace with current publications in these languages, new titles are updated monthly. A list of themed collections by language offers an easy way to select titles. Monthly newsletter containing new title lists, news, promotions and features of special interest is sent to our subscribers. And when a noteworthy item becomes available, it is featured on our website and a news flash is sent to alert our subscribers. These collection development and selection tools are part of our service provided to the Library at no additional charge.

Our strong **EDITORIAL TEAM** writes original English annotation for our titles. The team is comprised of bilingual CJKV editors who are knowledge about the publications in these countries. With English annotations, selection from our online catalog is made easier.

Our English and CJKV website is searchable by language, WorldCat presence, and handy selection criteria such as category, age group, stock availability and publishing year. A user of our website can complete his/her order online.

Tsai Fong Books, Inc. 3711 Briarpark Drive, Suite 200, Houston, Texas 77042 Phone: 713-974-6226 Fax: 713-974-1164 www.bookswindow.com info@bookswindow.com

The Best Source for Asian Language Materials

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Advance Search Feature use multiple criteria to refine or broaden your search to help you find the books you need.

		note illeas a	e narrow dow	n your search.	
Book Title			Languages	- Seiect Languages -	*
Author			Age Group	- Select Age Group -	•
ISBN			In WorldCac	Not Required	٧
Publish Year	То		Stock Status	- Severx Stock Status -	٧
Category	- Select Category -	•			

In addition to English annotation of our products, physical description, edition, ISBN, list price, publication date, publisher, transliteration of title and author, original title if translated, category, available OCLC control number, and stock availability for each title are provided online as well.

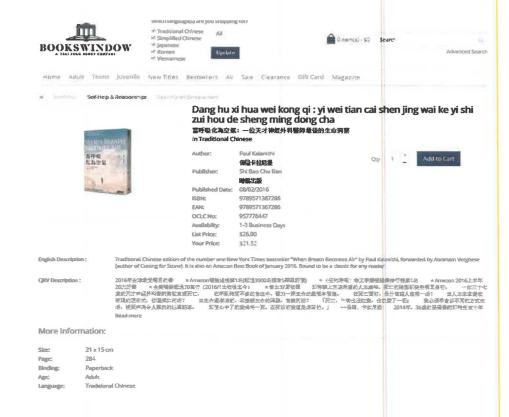
The Best Source for Asian Language Materials

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Below are the samples of title detail snapshots:

When Breath Becomes Air (Traditional Chinese)

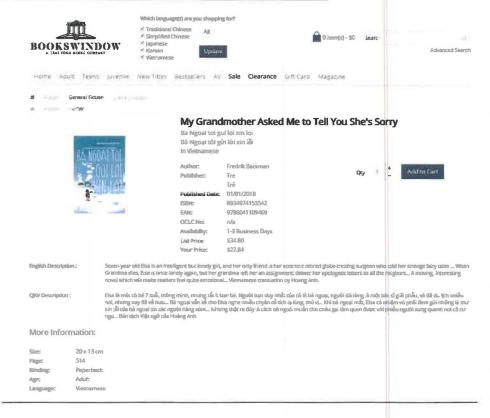


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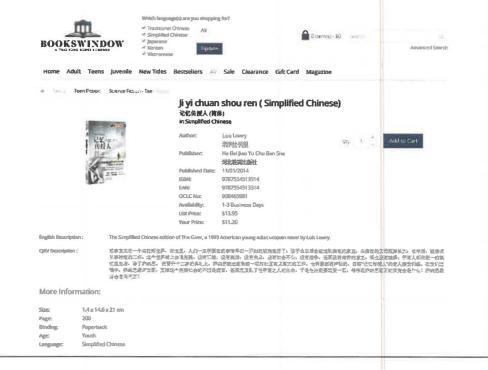
My Grandmother Asked Me to Tell You She's Sorry (Vietnamese)



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Ji Yi Chuan shou ren (Simplified Chinese)



OUR FLEXIBLE ORDERING STYSTEM

- Make your own selection by browsing our website www.bookswindow.com
- Place Standing Order to receive new books regularly
- Request special orders for specific needs such as Opening Day, Story Time, Community reads, Culture Festivals, Grant Awards, or Patron Requests

Order History De-Duplication

Our website will alert you if you select a title that has been purchased previously from Tsai
 Fong Books by your library

View Order History online

Your library's order history from Tsai Fong Books can be viewed in your account online

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CATALOGING AND PROCESSING

Our bibliographic records provide transliterations of a book's author, title, and publisher, as well as publishing date, category, ISBN, language, and OCLC control number if available in WorldCat. The electronic format is a compilation of bibliographic information for titles on your order provided in spreadsheet format. This is FREE upon request with your purchase of books and/or audiovisual materials. Please see attached Appendix A: Electronic bibliographic records samples.

You also have the option of paper format records at a charge. The paper format is a card inserted inside the front cover of the books or securely placed on the outside of bundled multiple-volume books; one card per title. Below is sample of Paper Bib record:

ISBN/Item No:

9789862856970

Author:

Title:

夜夜不休

Romanized:

Ye ye gong zhen (Traditional Chinese) 夜夜共枕

Publisher

Lan wa zi chu ban she

藍襪子出版社

Publish Date:

02/16/2017

Category:

Fiction Romance

Language:

Traditional Chinese

OCLC#:

974640485

MARC Records: We provide MARC Records for CJKV materials upon request at a charge. Below is a sample of MARC Record:

=LUR 00767nam 2200205 45e0 =008 110712s2011tttichtstittttttttt000\ftichire =020 1889787544810069 =100 1186890-01/818aYang, Hong Ying, #44. 1986880-02/618aFlao liang na hat xia lin guo AcYang Hong Ying zhu. =246 388aTao qi buo ma xiao tiao xi ile : piao liang nu hat xia ile guo "-246 3088 race (bloom as bloom bas on to 1 peop internal son "250 Washing | Ib ban "250 Washing | Ib ban "250 Washing | Ib ban | Ib ba -880 198100-01/\$188版红樓 #80 1\\$8246-02/81\$10課英女被更林果 /Bc指红棚 800 13886280-03/\$18a是1X :\$63E.为出版社.\$c:2011.

Other Physical processing services (additional fee) – Kapco cover, Jacket cover, Property Stamp, Barcode label are available upon request.

Tsai Fong Books, Inc. 3711 Briarpark Drive, Suite 200, Houston, Texas 77042 Phone: 713-974-6226 Fax: 713-974-1164 www.bookswindow.com info@bookswindow.com

The Best Source for Asian Language Materials

www.Bookswindow.com



OUR CUSTOMER SERVICE

We assign designated Account Manager to coordinate Austin Public Library account needs throughout the ordering process. . A normal response time is within 24 hours. Our Turn-around time for in-stock items is 1-3 business days and we consistently maintain the fill rate over 98%.

REFERENCE

(1) Name: Count of Los Angeles Public Library

Contact Name: Patricia Blouin

Address: 7400 E. Imperial Hwy, Downey, CA 90242

Tel. 562-940-8532

Re: Tsai Fong Books has supplied County of Los Angeles Public Library with Chinese, Japanese,

Korean and Vietnamese books and materials for over 12 years.

(2) Name: King County Library Systems

Contact Name: Lynn Wang

Address: 960 Newport Way NW, Issaguah, WA 98027

Tel. 425-369-3248

Re: Tsai Fong Books has supplied County of Los Angeles Public Library with Chinese, Japanese,

Korean and Vietnamese books and materials for over 10 years.

(3) Houston Public Library

Contact Name: Christopher Hu

Address: 500 McKinney St, Houston, Texas 77002

Tel. 832-393-1483

Re: Tsai Fong Books has supplied County of Los Angeles Public Library with Chinese, Japanese,

Korean and Vietnamese books and materials for over 10 years.

(4) Fort Bend County Libraries

Contact Name: Monique Franklin

Address: 1001 Golfview Drive, Richmond, Tx 77469

Re: Tsai Fong Books has supplied County of Los Angeles Public Library with Chinese, Japanese,

Korean and Vietnamese books and materials for over 12 years.

Tsai Fong Books, Inc. 3711 Briarpark Drive, Suite 200, Houston, Texas 77042

Phone: 713-974-6226 Fax: 713-974-1164 www.bookswindow.com info@bookswindow.com



CERTIFICATE OF INCORPURATION

OF

TSAI FONG BOUKS. INC. CHARTER NUMBER 01502156

THE UNDERSIGNED. AS SECRETARY OF STATE OF THE STATE OF TEXAS, HEREBY CERTIFIES THAT THE ATTACHED ARTICLES OF INCORPORATION FOR THE ABOVE MAKED CORPORATION HAVE BEEN RECEIVED IN THIS OFFICE AND ARE FOUND TO COMPORATION LAN.

ACGORDINGLY, THE UNDERSIGNED, AS SECRETARY OF STATE, AND BY VIRTUE OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS GERTIFICATE OF INCORPORATION.

ISSUANCE OF THIS CERTIFICATE OF INCORPORATION ODES NOT AUTHORIZE

THE USE OF A CORPORATE NAME IN THIS STATE IN VIOLATION OF THE RIGHTS OF

ANOTHER UNDER THE FEDERAL TRADEMARK ACT OF 1946, THE TEXAS TRADEMARK LAW

THE ASSURED BUSINESS OF PROFESSIONAL MANE ACT OF THE COMMON LAW.

DATED AUG. 20. 1998 EFFECTIVE AUG. 20. 1998



Alberto R. Gorgostez, Secretary of State

CONTRACT BETWEEN THE CITY OF AUSTIN AND India for Everyone For

Foreign Language Books Contract No. PA180000087

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and India for Everyone ("Contractor"), having offices at 18760 Tilson Avenue 18760 Tilson Avenue Cupertino, CA. 95014

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 <u>Designation of Key Personnel</u>. The Contractor's Contract Manager for this engagement shall be Monica Khosla, Phone: 877-417-5185, Email Address: mkhosla@indiaforeveryone.org. The City's Contract Manager for the engagement shall be Jorge A. Valle, Phone: (512) 974-7432, Email Address: jorge.valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:
 - 2.2.1 Each shipping container shall be clearly and permanently marked with the Contractor's name and address, the City's name, 635 N. Pleasant Valley Rd. Austin, TX 78702 and purchase order
 - 2.2.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - 2.2.3 Delivery is to be made within 65 calendar days after the order is placed (either verbally or in writing).
 - 2,2,4 The contractor must deliver an average of 80 percent of the publications.

SECTION 3. COMPENSATION

- 3.1 <u>Contract Amount.</u> The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractors shall be paid an amount not-to-exceed \$172,539.00 for all fees and expenses, to be shared between all Contractors.
- 3.2 Economic Price Adjustment.

Service Contract 1 Revised 12-7-2017

- 3.2.1 <u>Price Adjustments.</u> Prices shown in this Contract shall remain firm for the first (12 months) period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.2.2 <u>Effective Date</u>. Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.2.3 Adjustments. A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- 3.2.4 <u>Indexes.</u> In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - 3.2.4.1 The following definitions apply:
 - 3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).
 - 3.2.4.1.2 Base Price. Initial price quoted, proposed and/or contracted per unit of measure.
 - 3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - 3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - 3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.
 - 3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - 3.2.4.2.1 Utilize final Compilation data instead of Preliminary data
 - 3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.
 - 3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%				
Database Name: Producer Price Index (PPI)				
Series ID: PCU451211451211101				
Geographical Area: N/A				
Description of Series ID: PPI Industry data for Book stores-Retailing of books				
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All				

	3.2.5	Calculation.	Price	adjustment	will be	e calculated	as	follows
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3.2.5.1	Single Index.	Adjust the Base	Price by the	same factor	calculated for	the index change.
---------	---------------	-----------------	--------------	-------------	----------------	-------------------

Index at time of calculation			

Divided by index on solicitation close date	
Equals Change Factor	
Multiplied by the Base Rate	
Equals the Adjusted Price	

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Public Library, Administration	
Attn:	Jorge A. Valle	
Email Address Jorge.Valle@austintexas.gov		

- 3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.5 <u>Non-Appropriation</u>. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
 - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 months periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

- 4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- 4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 4.1.3 This is a 12 months Contract. Prices are firm for the first twelve (12) months.
- 4.2 <u>Right To Assurance</u>. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default.</u> The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.
- 4.4 <u>Termination For Cause</u>. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place

Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 <u>Fraud.</u> Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 <u>Insurance</u>: This contract does not require insurance.

5.2 Equal Opportunity.

- 5.2.1 Equal Employment Opportunity. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications
- 5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

- 5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- 5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such

Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- 6.3 <u>Warranty Deliverables.</u> The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - 6.3.1 Recycled Deliverables shall be clearly identified as such.
 - 6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - 6.3.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- 6.3.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
 - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
 - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:
 - 7.4.1 disposal of major assets;

- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

- 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

- 7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
 - 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City: To the Contractor:

City of Austin, Purchasing Office India for Everyone

ATTN: Sarah Ramos, Contract Administrator ATTN: Monica Khosla PO BOX 1088 18760 Tilson Avenue

Austin, Texas 78767 Cupertino, CA. 95014

- 7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.11 <u>Advertising</u>. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 Assignment-Delegation. The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 <u>Waiver</u>. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 <u>Interpretation</u>. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

- 7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator

within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
- 7.25 Holidays. The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

- 7.29 <u>Order of Precedence</u>. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
 - 7.29.1 any exceptions to the Offer accepted in writing by the City;
 - 7.29.2 the Supplemental Purchase Terms and Conditions;
 - 7.29.3 the Standard Purchase Terms and Conditions;
 - 7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

INDIA FOR EVERYONE	CITY OF AUSTIN
By: Signature	By: Signature Hoodin-Blown
Name: Mon, CA KHOCLH Printed Name	Name: Lines Coodin-Brown Printed Name
Title: TIPECTOR	Title: Contract Management Supr
Date: 10/19/2018	Date:

List of Exhibits

Exhibit A India for Everyone Pricing Agreement

Exhibit B Non Discrimination Certification, Section 0800

Exhibit C India for Everyone Statement of Qualifications and/or Applicable Licenses

Exhibit A

QUOTE



		-
То	Austin Public Library	
	800 Guadalupe St. Austin, TX 78701	
Quote#	QU-2320	
PO Number	IFEAPL073018	
Date	July 30, 2018	
		-

India For Everyone 18760 Tilson Ave Cupertino, CA 95014

Description	Fiscal Year	Unit Price
Books and DVDs from India in different languages	2018-2019	\$9,975.00

Total \$9,975.00

EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this	19	day of <i>O</i> @	ctober, 2	-018
			CONTRACTOR Authorized Signature	MONICA KHOSLIT
			Title	- ZIRECTOP

Exhibit C



www.IndiaForEveryone.org

1.877.417.5185

OCLC WorldCat Partner

About Us

India For Everyone is a provider of books and media from India to libraries across USA and Canada. We have been serving public libraries all over the US since 2005. These include Woodbridge Main Library and Franklin township Public Library in New Jersey, Tuckahoe Public Library in New York, Chicago Public Library and Cook Memorial Public Library in Illinois, Cleveland Public Library in Ohio, San Jose Public Library, Alameda County Library and Los Angeles Public Library in California, Plano Public Library System and Brazoria County Library System in Texas to name a few.

How we help build well-circulating collections

In our experience, once the library shares the budget and the number of copies per title, we then offer complimentary services including customized selection lists put together by our selectors who are well versed with the Indian culture and patrons' preferences in public libraries. The collection includes new and popular titles from the past three years. The selectors check the library's online catalog to confirm that the titles that they are recommending are not in the library's catalog already.

MARC records

MARC record is included with every title we represent in our catalog at no extra charge. A print out is included in along with the book just like in the attached sample, as well as an electronic copy (.mrc file) is emailed to the library.

Delivery and Returns

From the time, the library confirms the order, it takes 4 to 6 weeks to deliver the order. Once we receive the products in the warehouse in Cupertino CA, we mail the products to the library within the week. We offer an exceptional return policy -- a library may return any title for any reason.

Don't just take our word for it: hear from your peer librarians about India for Everyone's carefully selected materials, as well as processing and cataloging services –

"Thank you so much for your help! Of the total 200 DVDs, only 31 left on the shelf after the first day. I want to congratulate you as well for this achievement!

I am looking forward to hearing from you for the additional 100 DVDs. And I am talking to my colleagues about Hindi books."

Yu-Lan C, Santa Clara City Library

The <u>Calabazas</u> Branch Library opened on Saturday June 8, 2013. The Indian language collection looks amazing and I had the opportunity of speaking with many of the customers on opening day. Everyone was very excited with the selection of books and DVDs. Thank you very much for working with me on stocking all the new branches. Best regards, Vidya K, **San Jose Public Library**

You have been nothing but THE BEST for us.

Edit B, City of Palo Alto

Monica Khosla

EXPERIENCE

India For Everyone — Founder and Director

2005 - PRESENT

- Responsible for end-to-end strategy and execution across all functions
- Sales: Drove direct sales to library customers throughout USA and Canada. Established strong relationships with many reference accounts
- Marketing: Provided oversight on all marketing activities including conferences, web presence, and social media
- Operations: Established supply chain with materials vendors across many Indian languages; hired team in US to handle material processing and shipping

Desi Knowledge — Director

March 2001 - December 2004

Sole distributor of Amar Chitra Katha graphic novels and other Indian children's books in America through retail establishments and ecommerce website.

- Established relationships with retail vendor to house and sell the children's books
- Drove eCommerce operation to reach consumers across USA

Computer Sciences Corporation — Senior designer

September 1997 - February 2001

Worked on multiple project to promote established brands

- Senior design professional with team leadership and project management experience:
- Designed and produced a new corporate internet site that enhanced the corporate brand and provided new functionality
- Led UI design teams for clients ranging from Fortune 100 companies to internet startups
- Managed the production team (15 people located in CA and NY) and process. Defined milestones and deliverables. Led the development by focusing on content management, functionality, quality assurance, and on-time delivery

18760 Tilson Avenue Cupertino, CA 95014 1.877.417.5185 mkhosla@IndiaForEveryone.org

SKILLS

Web design including HTML/CSS

Adobe Photoshop

Microsoft Word, Excel, Access

Sales and Customer Service

KEY SERVICES

Customized selection lists of materials including books and media from India

Complimentary MARC records

Shelf ready processing

LANGUAGES

English

Hindi

Punjabi

EDUCATION

Academy of Art, San Francisco — *Masters, Fine Arts*January 1995 - August 1997
Advertising design.

Jamia Milia Islamia, New Delhi, India — *Bachelor, Fine Arts*April 1990 - August 1994

Graphic design.

CONTRACT BETWEEN THE CITY OF AUSTIN

AND

Latin American Book Source

For

Foreign Language Books Contract No. PA180000087

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Latin American Book Source ("Contractor"), having offices at 681 Anita Street, Suite 102, Chula Vista, CA 91911.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Latin American Book Source, Phone: 619-426-1226, Email Address: sales@latambooks.com. The City's Contract Manager for the engagement shall be Jorge A. Valle, Phone: (512) 974-7432, Email Address: jorge.valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:
 - 2.2.1 Each shipping container shall be clearly and permanently marked with the Contractor's name and address, the City's name, 635 N. Pleasant Valley Rd. Austin, TX 78702 and purchase order
 - 2.2.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - 2.2.3 Delivery is to be made within 65 calendar days after the order is placed (either verbally or in writing).
 - 2.2.4 The contractor must deliver an average of 80 percent of the publications.

SECTION 3. COMPENSATION

3.1 <u>Contract Amount</u>. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractors shall be paid an amount not-to-exceed \$172,539.00 for all fees and expenses, to be shared between all Contractors.

3.2 Economic Price Adjustment.

- 3.2.1 Price Adjustments. Prices shown in this Contract shall remain firm for the first (12 months) period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.2.2 <u>Effective Date</u>. Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.2.3 Adjustments. A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- 3.2.4 <u>Indexes</u>. In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - 3.2.4.1 The following definitions apply:
 - 3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).
 - 3.2.4.1.2 Base Price. Initial price quoted, proposed and/or contracted per unit of measure.
 - 3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - 3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - 3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.
 - 3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - 3.2.4.2.1 Utilize final Compilation data instead of Preliminary data
 - 3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.
 - 3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Index (P	'PI)
Series ID: PCU451211451211101	λ
Not Seasonally Adjusted □	☐ Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: PPI Industry data	a for Book stores-Retailing of books
This Index shall apply to the following iter	ns of the Bid Sheet / Cost Proposal: All

- 3.2.5 **Calculation.** Price adjustment will be calculated as follows:
 - 3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Public Library, Administration	
Attn:	Jorge A. Valle	
Email Address	Jorge.Valle@austintexas.gov	

- 3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

- 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.5 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
 - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 months periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

- 4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- 4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 4.1.3 This is a 12 months Contract. Prices are firm for the first twelve (12) months.
- 4.2 Right To Assurance. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the

bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

- Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages. costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 <u>Fraud.</u> Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: This contract does not require insurance.

5.2 Equal Opportunity.

- 5.2.1 <u>Equal Employment Opportunity.</u> No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
- 5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- 6.3 <u>Warranty Deliverables.</u> The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - 6.3.1 Recycled Deliverables shall be clearly identified as such.
 - 6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - 6.3.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs,

shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- 6.3.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
 - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
 - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 <u>Compliance with Health, Safety, and Environmental Regulations</u>. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

- 7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- 7.5.2 Records Retention:
 - 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
 - 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 <u>Stop Work Notice</u>. The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

- 7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
 - 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 <u>Claims.</u> If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

To the Contractor:

City of Austin, Purchasing Office

Latin American Book Source

ATTN: Sarah Ramos, Contract Administrator

ATTN: Edgardo Moctezuma

PO BOX 1088

681 Anita Street, Suite 102

Austin, Texas 78767

Chula Vista, CA 91911

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- 7.11 <u>Advertising.</u> The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to

deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.13 <u>Gratuities</u>. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 <u>Prohibition Against Personal Interest in Contracts</u>. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 <u>Assignment-Delegation</u>. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 <u>Waiver</u>. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

- 7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as

mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25	Holidays.	The following	holidays are	observed	by the City:
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Holiday	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

- 7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
 - 7.29.1 any exceptions to the Offer accepted in writing by the City;
 - 7.29.2 the Supplemental Purchase Terms and Conditions;
 - 7.29.3 the Standard Purchase Terms and Conditions;
 - 7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

LATIN AMERICAN BOOK SOURCE	CITY OF AUSTIN
9	By: Signature How Brown Signature
Name: Edgardo Motegumo Printed Name	Name: Lines Goodin-Brown Printed Name
Title: President	Title: Contract Management Supr
Date: 10 18 2018	Date: 11-14-18

List of Exhibits

Exhibit A	Latin American Book Source Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Latin American Book Source Statement of Qualifications and/or Applicable Licenses

LATIN AMERICAN BOOK SOURCE

681 Anita Street# 102 Chula Vista, CA 91911 (619) 426-0212

ORDER NUMBER: 0072472

ORDER DATE: 12/22/2016

SALESPERSON: 0000

CUSTOMER NO: 32-0000003

SOLD TO: Austin Public Library PO Box 1088

Austin, TX 78767

CONFIRM TO: Diana.Miranda-Murillo SHIP TO:

Austin Public Library ACCS 635 N. Pleasant Valley Road Austin, TX 78702

CUSTOMER P.O. QUOTE	SHIP VIA UPSGRC		F.O.B.	TERMS NET 30 DAYS		
ITEM NUMBER	UNIT	ORDERED	SHIPPED	BACK ORDER	PRICE	AMOUNT
0000002233 Books in Spanish	EACH	1	0 WHSE: 000	0	9,975.00	9,975.00

EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Exhibit C

Professional Description

Supplying books, DVDs, Blu-Ray, Music CD and Audiobooks in Spanish to US Public Libraries is an ever-evolving learning experience. Despite our 28 consecutive years in the business, we encounter new challenges each passing year.

In the past 5 years, we have received contracts with many libraries and library systems. County of San Diego PL, San Francisco Public Library, County o LA (renewed), Orange County, San Jose Public Library, Austin Public Library, Los Angeles Public Library (they do not have a contract with us or with anybody else), etc.

In these last 5 years we have supplied not only what we traditionally offer (books) but have included many more products: DVDs, Blu-Ray, Music CDs and now Audiobooks. But the most important thing is that we have responded to the specific needs of our customers. We have added Romance novels, non-fiction titles for children, books geared towards younger men (cars, books about cars, history, high-end literature). Our goal is to always meet the needs of our customers.

In the last 5 years we have expanded presence into Mexico. We have two different offices and warehouses in Tijuana which allows us to ship to Tijuana from publishers in Mexico and import books regularly. By far, the biggest need for titles in Spanish is of titles published in Mexico.

Latin American Book Source, Inc. provides, without a doubt, the broadest range of available materials in Spanish in the US. We have carefully avoided "exclusive" distribution contracts, but are able to supply titles from any publisher; we travel regularly to different countries to assess their new releases, we keep our customers informed each month of the newest titles in the Spanish speaking world. The business model that Ingram, Baker & Taylor and to a lesser extent, Brodart used is antiquated as they only supply the very limited number of titles they can stock in the US and no longer import books from Mexico or Latin America. For example, Ingram makes available only about 350 different titles from the almost 20,000 titles published by the imprints that comprise Grupo Planeta!

CALIFORNIA STATE BOARD OF EQUALIZATION

SELLER'S PERMIT

ACCOUNT NUMBER

LATIN AMERICAN BOOK SOURCE INC. 681 ANITA ST STE 102 CHULA VISTA, CA 91911-4663

IS HERBY AUTHORIZED PURSUANT TO **SALES AND USE TAX LAW** TO ENGAGE IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ABOVE LOCATION. THIS PERMIT IS VALID ONLY AT THE ABOVE ADDRESS.

THIS PERMIT IS VALID UNTIL REVOKED OR CANCELED AND IS NOT TRANSFERABLE. IF YOU SELL YOUR BUSINESS OR DROP OUT OF A PARTNERSHIP, NOTIFY US OR YOU COULD BE RESPONSIBLE FOR SALES AND USE TAXES OWED BY THE NEW OPERATOR OF THE BUSINESS.

Not valid at any other address

NOTICE TO PERMITTEE: You are required to obey all Federal and State laws that

regulate or control your

business. This permit does not allow you to do

otherwise.

For general tax questions, please call our Information Center at 800,400-7115.

For information on your rights, contact the Taxpayers' Rights Advocate Office at 888-3...... 2798 or 916-324-2798.

BOE-442-R REV, 15 (2-06)

A MESSAGE TO OUR NEW PERMIT HOLDER

As a seller, you have rights and responsibilities under the Sales and Use Tax Law. In order to assist you in your endeavor and to better understand the law, we offer the following sources of help:

- · Visiting our website at www.boe.ca.gov
- · Visiting a district office

restar

- Attending a Basic Sales and Use Tax Law class offered at one of our district offices
- Sending your questions in writing to any one of our offices
- Calling our toil-free Information Center at 800-400-7115

As a seller, you have the right to issue resale certificates for merchandise that you intend to resell. Conversely, you have the responsibility of not misusing resale certificates. While the sales tax is imposed upon the retailer,

- You have the right to seek reimbursement of the tax from your customer
- You are responsible for filing and paying your sales and use tax returns timely
- You have the right to be treated in a fair and equitable manner by the employees of the Board
- You are responsible for following the regulations set forth by the Board

As a seller, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a Board representative when requested. You are also expected to notify us if you are buying, selling, adding a location, or discontinuing your business, adding or dropping a partner, officer, or member, or when you are moving any or all of your business locations. If it becomes necessary to surrender this permit, you should only do so by mailing it to a Board office, or giving it to a Board representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the Board, please contact the Taxpayers' Rights Advocate Office for help by calling toll-free, 888-324-2798 or 916-324-2798. Their fax number is 916-323-3319.

Please post this permit at the address for which it was issued and at a location visible to your customers.

STATE BOARD OF EQUALIZATION
Sales and Use Tax Department

CONTRACT BETWEEN THE CITY OF AUSTIN AND Lectorum For Foreign Language Books

Contract No. PA180000087

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Lectorum. ("Contractor"), having offices at 205 Chubb Avenue, Lyndhurst, NJ 07071.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 <u>Responsibilities of the Contractor</u>. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 <u>Designation of Key Personnel</u>. The Contractor's Contract Manager for this engagement shall be Lectorum, Phone: 800-345-5946 x2238, Email Address: Ibejarano@lectorum.com. The City's Contract Manager for the engagement shall be Jorge A. Valle, Phone: (512) 974-7432, Email Address: jorge.valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:
 - 2.2.1 Each shipping container shall be clearly and permanently marked with the Contractor's name and address, the City's name, 635 N. Pleasant Valley Rd. Austin, TX 78702 and purchase order
 - 2.2.2 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - 2.2.3 Delivery is to be made within 65 calendar days after the order is placed (either verbally or in writing).
 - 2.2.4 The contractor must deliver an average of 80 percent of the publications.

SECTION 3. COMPENSATION

- 3.1 <u>Contract Amount</u>. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractors shall be paid an amount not-to-exceed \$172,539.00 for all fees and expenses, to be shared between all Contractors.
- 3.2 Economic Price Adjustment.

- 3.2.1 Price Adjustments. Prices shown in this Contract shall remain firm for the first (12 months) period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.2.2 <u>Effective Date</u>. Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.2.3 <u>Adjustments</u>. A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- 3.2.4 <u>Indexes</u>. In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - 3.2.4.1 The following definitions apply:
 - 3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).
 - 3.2.4.1.2 Base Price. Initial price quoted, proposed and/or contracted per unit of measure.
 - 3.2.4.1.3 Adjusted Price. Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - 3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - 3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.
 - 3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - 3.2.4.2.1 Utilize final Compilation data instead of Preliminary data
 - 3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.
 - 3.2.4.3 Index Identification. Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Inc	dex (PPI)
Series ID: PCU451211451211101	
	Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: PPI Industr	ry data for Book stores-Retailing of books
This Index shall apply to the following	ng items of the Bid Sheet / Cost Proposal: All

3.2.5 Calculation. Price adjustment will be calculated as follows:

3.2.5.1 Single Index. Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation	1		

Divided by index on solicitation close date	
Equals Change Factor	
Multiplied by the Base Rate	
Equals the Adjusted Price	

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Public Library, Administration	
Attn:	Jorge A. Valle	
Email Address	Jorge.Valle@austintexas.gov	

- 3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- 3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
 - 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.5 <u>Non-Appropriation</u>. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
 - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 months periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.

- 4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- 4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).
- 4.1.3 This is a 12 months Contract. Prices are firm for the first twelve (12) months.
- 4.2 <u>Right To Assurance</u>. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default</u>. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

- Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 <u>Fraud.</u> Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: This contract does not require insurance.

5.2 Equal Opportunity.

- 5.2.1 <u>Equal Employment Opportunity</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
- 5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
- 6.3 <u>Warranty Deliverables.</u> The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - 6.3.1 Recycled Deliverables shall be clearly identified as such.
 - 6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - 6.3.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of

the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- 6.3.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
 - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
 - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the iob.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 <u>Compliance with Health, Safety, and Environmental Regulations</u>. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:
 - 7.4.1 disposal of major assets;

- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

- 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 Stop Work Notice. The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

- 7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
 - 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties).

- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 <u>Claims</u>. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 <u>Notices</u>. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City: To the Contractor:

City of Austin, Purchasing Office Lectorum

ATTN: Sarah Ramos, Contract Administrator ATTN: Laura Bejarano, Library and Trade Sales Manager

PO BOX 1088 205 Chubb Avenue,
Austin, Texas 78767 Lyndhurst, NJ 07071

- 7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use. disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate. copy. divulge. recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.11 <u>Advertising</u>. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.13 <u>Gratuities.</u> The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 <u>Prohibition Against Personal Interest in Contracts</u>. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 <u>Assignment-Delegation</u>. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

- 7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filling of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in

the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 Holidays. The following holidays are observed by the C	7.25	Holidays.	The follow	wing holiday	s are c	bserved	by the Cit
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Holiday	Date Observed	
New Year's Day	January 1	
Martin Luther King, Jr.'s Birthday	Third Monday in January	
President's Day	Third Monday in February	
Memorial Day	Last Monday in May	
Independence Day	July 4	
Labor Day	First Monday in September	
Veteran's Day	November 11	
Thanksgiving Day	Fourth Thursday in November	
Friday after Thanksgiving	Friday after Thanksgiving	
Christmas Eve	December 24	
Christmas Day	December 25	

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 <u>Non-Suspension or Debarment Certification</u>. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

- 7.29 <u>Order of Precedence</u>. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
 - 7.29.1 any exceptions to the Offer accepted in writing by the City;
 - 7.29.2 the Supplemental Purchase Terms and Conditions;
 - 7.29.3 the Standard Purchase Terms and Conditions;
 - 7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

LECTORUM /	CITY OF AUSTIN
By: Signature	By: Junei Hoodin Brown Signature
Name: Alex Correa Printed Name	Name: Linell Goodin-Brown Printed Name
Title: President & CEO	Title: Contract Management Sup
Date: 10/18/2018	Date: 11-14-18

List of Exhibits

Exhibit A Lectorum Pricing Agreement

Exhibit B Non Discrimination Certification, Section 0800

Exhibit C Lectorum Statement of Qualifications and/or Applicable Licenses

Exhibit A

Lectorum Publications, Inc.

Fed ID # 13-3736176 205 Chubb Ave. Lyndhurst, NJ 07071-3520 Lectorum.com Phone (800) 345-5946 Fax (877) 532-8676

Quote

Bill To:

Customer Number: 110748 AUSTIN PUBLIC LIBRARY - 110748

TERRAZAS BRANCH

AUSTIN, TX 78702

1105 E. CESAR CHAVEZ STREET

Ship To:

Ship To Number: 1105 AUSTIN PUBLIC LIBRARY ATTENTION: JORGE VALLE

710 W. CESAR CHAVEZ ST

AUSTIN, TX 78701

Quote#:

274696

Date:

7/31/2018

Terms:

0 657380

Batch#: Ship Method:

UPS Ground JVallesQuote

PO#: PO# Date:

Contract:

Contact:

Contact Phone: Contact Email:

Entered By:

ctiburcio

Qty	Title #	Title	Price Dis	c Extended
1	888867	LIBRARY BOOKS SELECTION	\$6,840.00 100	9% \$0.00
Qty O	rdered 1	Oty Available Back Ordered Total Weight 0 1	Sub Total:	\$6,840.00
			Tax:	\$0.00
Notes			Shipping Charges:	\$0.00
			Total Order:	\$6,840.00

EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _	6th	day of _	of November		2018		
			CONTRA	ACTOR	Lectorum Publ	ications, Inc.	
			Authorized Signature Title		Sundo	unde Dem	
					TIEASUIE		

Exhibit C



7/31/2018

Jorge A. Valle, CPCM Central Library | Contract Management Specialist IV Austin Public Library

Dear Mr. Valle:

Company Background

Lectorum Publications opened its doors in 1960 as a trade bookstore, catering to the needs of the general public and college students in the New York metropolitan area. We have grown to become the largest Spanish-language book distributor for children, young adults, and adults in the country, with over 15,000 titles from more than 500 domestic and foreign publishers.

Lectorum's publishing program, established in 1990, produces exceptional titles each year. We are proud to publish books of the highest quality. Our line of Spanish-language and bilingual books includes well-loved classics, awardwinners such as Cuando los grandes eran pequeños, the popular La casa del árbol (Magic Tree House) series, 5 titles from Kevin Henkes, poignant novels by Christopher Paul Curtis, and the acclaimed Braids/Trencitas.

Our Experience

Lectorum's bilingual staff reviews each and every children's book for inclusion in our catalog. We read them from cover to cover to make sure they do not contain any objectionable or offensive content and, in the case of translations, that the books do not contain grammatical errors. Lectorum's adult book selection committee meets at least once a month to evaluate new books. This enables us to choose the best books for collection development. This committee is made up of employees with close to 100 years of combined experience in Spanish publishing!



Services to libraries:

Opening day collections

Lectorum has created opening day collections for libraries both big and small. The only things we require in order to do so is a copy of your patron profile, a list of the types of materials wanted, and the branch budget. We create the collections from in-stock materials so there are no backorders.

Cataloguing, Processing, & Binding

We catalogue all the books in our children's catalog. We can also provide processing services for adult materials for any library that requires it. All paperback titles can be rebound if requested.

Approval Plans

This highly effective way to keep your collections up-to-date ensures libraries receive new materials on a monthly, bimonthly, or quarterly basis, depending on the library's needs. All approval orders receive free shipping and a special 30% discount. Children's books and adult books can be billed separately. Unwanted books may be returned by simply calling or faxing us using our toll-free numbers, and we will issue a UPS call tag.

Monthly E-mail Bulletins

Monthly e-mail bulletins feature new children's, young adult, and adult titles. You can sign up for one or two or all three mailing lists. In addition, we prepare special sell sheets for important books and series that we send from time to time.

International book fairs

Lectorum attends all the major international book fairs:

- Liber in Spain
- FIL Guadalajara in Mexico
- FILBO in Bogota
- Feria del Libro de Buenos Aires

We work with librarians attending the fair by assisting in selection, scheduling publisher presentations, consolidating all you're ordering, clearing customs, and delivering the books to your library. All orders from these fairs are shipped Free Freight and we extend a special 30% discount for these orders off our competitive prices.



Contact Information

Lectorum Publications, Inc ctiburcio@lectorum.com (800) 345 5946 Ext: # 2228

Sincerely,

Fernando Febus Comptroller & Operations Manager Lectorum Publications Inc.

INGEBORG PORTALES

83 Carlton Ave, Jersey City, NJ, 07306 <u>ingeborgpm@gmail.com</u> (786) 296-7913

EDUCATION

Master of Science in Education (M.S.) with a Specialization in Spanish Language. Education Nova Southeastern University.

Advance Placement Spanish Literature and Advance Placement Spanish Language and Culture. Florida International University and College Board.

Bachelor Degree of Arts in History. University of Havana, Cuba.

Librarian. National School of Library Science Technicians. Havana Cuba. **Thesis:** Promotion of Reading.

EXPERIENCE

Currently

Spanish author at National Network of Digital Schools: Designing Spanish Syllabus.

Designed and conducted classes in AP Spanish Language and Culture, Spanish III with Honors, Spanish II and I, and International Studies Content in Spanish.

Spanish Reporter 2006-2010 El Sentinel Newspaper, Fort Lauderdale, Florida

Spanish Reporter 2006-2010 Mercado de Dinero USA Magazine. Miami, Florida.

Photographic Research 2000-2004. Publications and Multimedia. Newspaper El Comercio, Lima, Peru.

COMPUTER SKILLS

Microsoft Office / Photoshop / Multimedia Websites and Blogs/ Video Editing Software/ Electronic Grade book/ Data Base Software.

PUBLICATIONS

El Sentinel Newspaper, Mercado de Dinero USA, El Nuevo Herald Newspaper, Tumiamiblog

PHOTOGRAPHY EXHIBITIONS

2018 Solo: Para habitar en tu casa, Artefactus Cultural Project Gallery. Miami, Florida.

2018 Selected Group: Earth Day. Creation Art Center. Miami, Florida.

2003 Selected Group: Tres visiones de la Habana. Arequipa, Perú.

Marjorie Samper 153 Stonehouse Road Glen Ridge, NJ 07028 (973) 259-1516

10/2000 - Present

Product Manager, Lectorum Inc., Lyndhurst, NJ

This position was created especially for me as a way to utilize the different roles I have held with the company. I not only help choose the books we decide to distribute on a national level, I also decide the best ways they should be marketed. I design Opening Day Collections, Classroom Libraries and Educational Sets, and manage our database of products. I am in charge of all the content on our company websites.

09/1998 - 09/2000

<u>Promotions Manager</u>, Scholastic Publications/Lectorum Inc., NY, NY

I returned to the Promotions Department, this time as Manager, overseeing a three-person staff. We produced an even larger volume of catalogs. I oversaw the implementation and design of a new website.

09/1994 - 08/1997

Purchasing Manager, Scholastic Publications/Lectorum Inc., NY, NY

Due to the successful promotion of books and years understanding what the market demanded, I was promoted to Purchasing Manager. I was given the responsibility to find new products for all markets, working with suppliers both domestically and abroad. I also helped design the purchasing functionality of a new database program we instituted in the 1990s.

03/1988 - 08/1994

Assistant Promotions Manager, Lectorum Publications Inc., NY, NY

I helped to prepare all catalogs, fliers, and promotional pieces for school, library, and retail sales. I monitored sales levels to help determine the success of sach compairs.

of each campaign.

07/1987 - 02/1988

Media Planner, Foote, Cone & Belding Advertising, Inc. NY, NY

I analyzed TV ratings and consumer preferences to help design media buying

plans for major corporate clients.

Skills:

Microsoft Office, Photoshop, Quark, Familiar with InDesign

Education:

BA in Spanish Literature & Hispanic Studies, Vassar College

Foreign Languages:

Fluent in Spanish

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State of New Jersey

CHRIS CHRISTIE

KIM GUADAGNO Lt. Governor DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
33 WEST STATE STREET, 5TH FLOOR
P.O. BOX 026
TRENTON, NEW JERSEY 08625-026

PHONE: 609-292-2146 FAX: 609-984-6679

FORD M. SCUDDER State Treasurer

CERTIFIED

under the

Small Business Set-Aside Act and Minority and Women Certification Program

This certificate acknowledges LECTORUM PUBLICATIONS INC is a MBE owned and controlled company, which has met the criteria established by N.J.A.C. 17:46.

This certification will remain in effect for three years. Annually the business must submit, not more than 20 days prior to the anniversary of the certification approval, an annual verification statement in which it shall attest that there is no change in the ownership, control or any other factor of the business affecting eligibility for certification as a minority or women-owned business.

If the business fails to submit the annual verification statement by the anniversary date, the certification will lapse and the business will be removed from the SAVI that lists certified minority and women-owned business. If the business seeks to be certified again, it will have to reapply and pay the \$100 application fee. In this case, a new application must be submitted prior the expiration date of this certification.

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Issued: August 4, 2017 Certificate Number: 69970-22 Peter Lowicki Deputy Director

Expiration: August 3, 2020



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and **Safety or Other Exempt Purchase (Non-Competitive)**

DAT	E:		DEPT: Library
TO:	P	urchasing Officer or Designee	FROM: Jorge Valle
PUF	RCHAS	SING POC:	PHONE: (512) 974-7588
or con	npetitiv		equires that municipalities comply with the procedures established e entering into a contract requiring an expenditure unless the Section 252.022.
		cal Government Code 252.022 fo Government Code	or a complete list of exemptions:
Govern	nment		vard and declares the competitive solicitation procedures in Local mpt for this procurement. This Certificate of Exemption is hereby as follows:
I. Th	e unde	ersigned is authorized and certifie	s that the following exemption is applicable to this procurement.
1	Please	e check the criteria listed below the	at applies to this request:
		•	f a public calamity that requires the immediate appropriation of f the municipality's residents or to preserve the property of a
		A procurement necessary to pre residents.	serve or protect the public health or safety of the municipality's
4		A procurement necessary becauproperty.	se of unforeseen damage to public machinery, equipment, or othe
	N	A procurement of personal profe	essional or planning services

☐ Other exemption from Chapter 252.022:

2. Describe this procurement

- What it is for and why it is needed?
 To meet the needs of the community and to comply with the City's Equity and Inclusion Plan, the
 Library needs to provide a more comprehensive selection of materials in multiple world languages.
 The Library needs to buy foreign language books from several vendors. Languages include but not
 limited to Chinese, Japanese, Vietnamese, Spanish, Hindi, Bengali and others.
- Describe the following (as applicable):
 - For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:
 - Provide description of the event leading to the procurement and a business justification for this purchase.
 - What would be the impact to department operations and the community if this purchase was not made?
 - How and why this vendor was selected?

For Professional, Personal, or Planning Service Exemptions:

- Why is the vendor the most qualified to provide the services? These vendors have shown to be able to consistently supply the various language books that APL needs. Each of the vendors has many years of experience in providing books in their respective languages to libraries across the country. They also all have very experienced staff and travel across the globe to obtain the latest/greatest foreign language books.
- Does this vendor have a history of working with the City? If so, was it on this
 particular service? Yes, on this particular service.
- Will this procurement be component of a larger service or phases of service? No.
- Is the vendor a City of Austin local vendor? No.
- Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications? Yes, see S/M/WBE certification for Lectorum Publications from the State of New Jersey.
- What qualifications, certifications, or specialized training does the vendor have? See attached documentation from vendors.
- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)? Library customers will not have access to books in the various languages that are either spoken in Austin or that they are interested in learning more about. APL will not be able to meet the needs of the community and to comply with the City's Equity and Inclusion Plan. Consequently, APL needs to provide a more comprehensive selection of materials in multiple world languages.
- What other vendors can provide these services and why are they not the best fit for the contract? While there are other vendors that may be able to provide these services (books), many of these vendors do not carry particular language books that our customers ask for. For instance, Tsai Fong is one of the vendors we've selected because they provide books in Chinese (Traditional and Simplified), Japanese, Korean and Vietnamese among others. We know that there are other vendors that may provide books in Chinese (Traditional but not Simplified) and Japanese, but not Korean or Vietnamese. So, if we wanted to have books in all these Asian languages that our customers want and use, we would have to contract with various vendors so we could cover the various Asian languages. Consequently, our list of foreign language vendors that we would have to contract with would grow exponentially and this would not be an efficient solution.

For Other Exceptions from Chapter 252.022:

Explain the circumstances of the procurement.

0	Pric app	es were determined to be reasonable based on the following (select all that ly):
		Prices are established under a current Cooperative contract.
		Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.
		Prices are the same or similar to current City contract.
		Notes: At a minimum, note the City of Austin contract number and title.
		Prices are the same or similar to current contract with another government.
		Notes: At a minimum, note the contract number, title and government that created the contract.
		Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
		Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
		Prices are established by law or regulation.
		Notes: At a minimum, note the legal or regulatory reference that established the prices.
	\boxtimes	Other means of determining Price Reasonableness.
		Notes: See note below.
competi	itive pr	ns in the form are designed to justify why this purchase should be exempt from a rocurement process. Failure to provide adequate documentation to substantiate the ead to the request being rejected.

APL has purchased world language books from all of the selected vendors over the recent years. Now we are proposing to do a Master Agreement so we can eliminate much of the paperwork involved with obtaining PO's every time we order select titles.

Additionally, these vendors are the best because:

- They provide us with materials that are far better quality.
- They have reliable inventory. (If we want 5 copies and they say they have it then we will get it.)
 Other vendors do not have adequate stock.
- These vendors have a positive history of working with libraries.
- These vendors have strong customer support and will provide that to APL. Other vendors do not have this.

These vendors are not a sole source, there are other vendors that can do this, but these vendors are by far the best at what they do in providing non-English materials to public libraries.

documentation: Scope of Work or Statement of Work (if appli Vendor's proposal/quote (if applicable) Project timeline with associated tasks, sched schedule	emption to the Purchasing Office along with the following cable) ule of deliverables or milestones, and proposed payment censes (Professional, Personal or Planning Services Only)
4. Because of the above facts and supporting docume	entation, the City of Austin exempts this procurement from
Local Government Code Chapter 252 and intends	to contract with:
(Vendor Name): Chulainn Publishing Corp., India	for Everyone, Latin American Book Source, Lectorum
Publications, Tsai Fong Books for	
(Description of Procurement): purchase foreign la	nguage books.
5. Check the contract type (one-time or multi-term) as This is a one-time request for \$	nd fill in the dollar amount and term as applicable:
☑This is a multi-term contract request for 12 n (2) renewal options for \$57,513 each for a total	nonths for the base term in the amount of \$57,513 with two contract amount of \$172,539.
Recommended Certification Criginator	8/02/2018 Date
Approved Certification Department Director	profesignee Pate
	er/General Managert Date nent requiring Council approval)
Purchasing Office Review Authorized Purchasin	g Office Staff Date 11-14-18
Purchasing Office Management Review Purchasing Officer or (If required due to signature authority level)	designee Date
	SIGN HERE